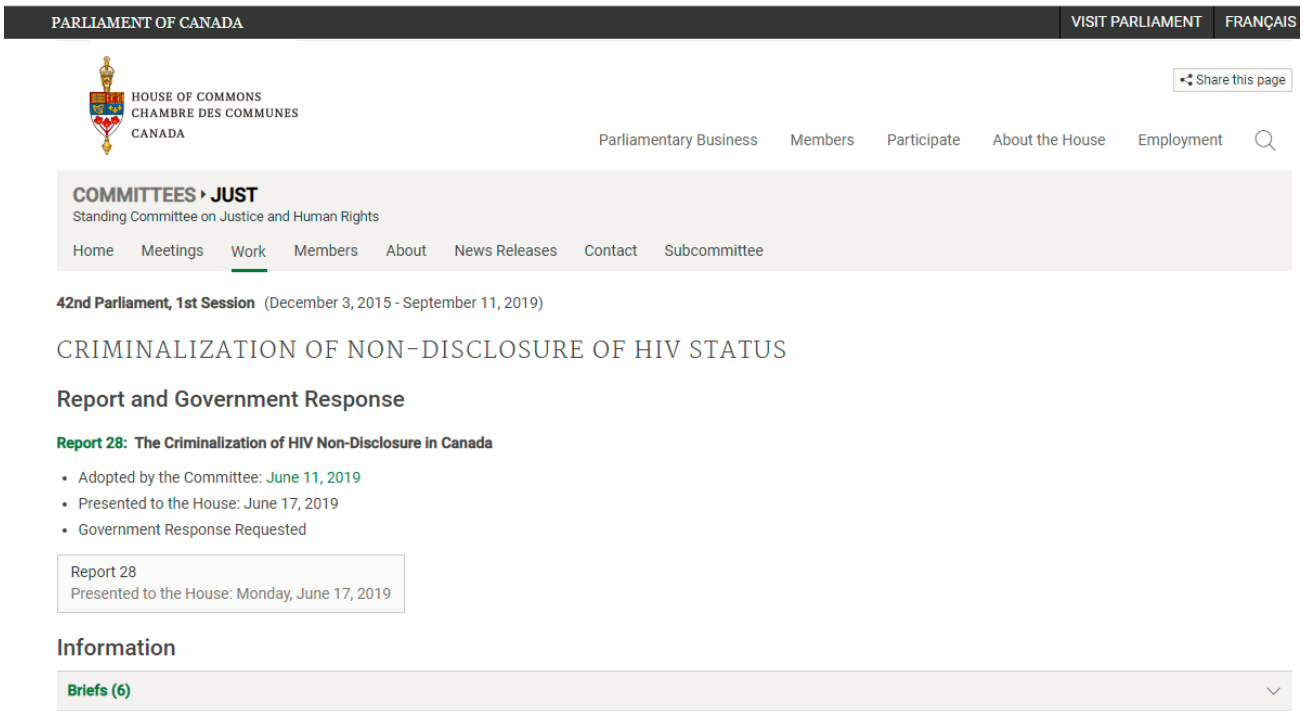
CANUCK LAW
Reporting That You're Not Getting Elsewhere (Do Your Own Research To Verify)

SEPTEMBER 24, 2020 BY RONNIE

Pushing To Decriminalize Non-Disclosure Of HIV In Sexual Encounters



Yes, this was actually discussed in several Parliamentary hearings in the Spring of 2019: should we decriminalize the failure to disclose HIV positive status in sexual encounters?

Just Another Scott Wiener Here?

California State Senator Scott Wiener was the subject of a recent piece. He helped pass legislation that reduced the penalty of KNOWINGLY spreading HIV from a felony to a misdemeanor. He also helped pass SB 145, which made sex offender registration optional for gay pedos.

This may be even worse, since proponents in the Canadian debate want to decriminalize non-disclosure of HIV status altogether.

Parliamentary Hearings In 2019

hiv.non.disclosure.april.9.meeting.transcript
hiv.non.disclosure.april.30.meeting.transcript
hiv.non.disclosure.may.7.meeting.transcript
hiv.non.disclosure.may.14.meeting.transcript
hiv.non.disclosure.June.04.meeting.transcript
hiv.non.disclosure.June.06.meeting.transcript
hiv.non.disclosure.June.11.meeting.transcript

hiv.CanadianHIVAIDSLegalNetwork-e
hiv.JointUnitedNationsProgrammeOnHIVAIDS-e
hiv.PivotLegalSociety-e

hiv.WomensLegalEducationAndActionFund-e

HIVJusticeWorldwide-e

hiv.non.disc.report.to.parliament

Lobbying By HIV Legal Network

Office of the Commissioner of Lobbying of Canada
Commissariat au lobbying du Canada
lobbycanada.gc.ca
Registry of Lobbyists
Registry Search
Reporting Tools
Statistics
Support
Sign in
Registry Dashboard → Advanced Registry Search → Advanced Registry Search Results → Registration
Registration - In-house Organization
Share th
Return to Advanced Registry Search
HIV Legal Network / Réseau juridique VIH / Richard Elliott, Executive Director
Registration Information
In-house Organization name: HIV Legal Network / Réseau juridique VIH
Previous in-house organization names
Responsible Officer Name: Richard Elliott, Executive Director
Initial registration start date: 2007-09-20
Registration status: Active
Registration Number: 782129-15984
Associated Communications
Total Number of Communication Repor
255
Monthly communication reports in the
months: 8

ization Details | Lobbyists Details

Subject Matter Details

Legislative Proposal, Bill or Resolution

- An Act to amend the Patent Act and the Food and Drugs Act (The Jean Chretien Pledge to Africa), S.C. 2004, c.23 Lobbying related to amendments aimed at simplifying further use of the act.
- Corrections and Conditional Release Act, S.C. 1992, c.20 Our interest is in ensuring that this legislation facilitates access to prevention information tools and services on the Human Immunodeficiency Virus (HIV), and facilitates access to adequate care, treatment and support for prisoners with HIV.
- Criminal Code R.S.C. 1985, C-46 Our interest is in ensuring that this law and its application in practice does not impede access to prevention information, tools and services (for example needle exchange programs, supervised injection facilities, methadone treatment) on the Human Immunodeficiency (HIV) and other health services for people who use drugs.

Legislative Proposal, Bill or Resolution, Policies or Program

Organization's membership or classes of membership

The organization's members are front-line AIDS service organizations, other service-providers and community-based org organizations working on HIV/AIDS and/or human rights and legal issues, legal service providers, and other individuals ar in HIV/AIDS and particularly legal and human rights issues related to the epidemic, mostly in Canada.

Government funding

End date of the last completed financial year: 2019-03-31

List of Government Funding

Government Institution	Funding Received in Last Financial Year	Funding Expected i
Employment and Social Development Canada (ESDC)	$3,360.00	No
Public Health Agency of Canada (PHAC)	$246,057.00	Yes

In-house Organization Contact Information

Address:
1240 Bay Street, Suite 600
Toronto, ON M5B 2A7
Canada

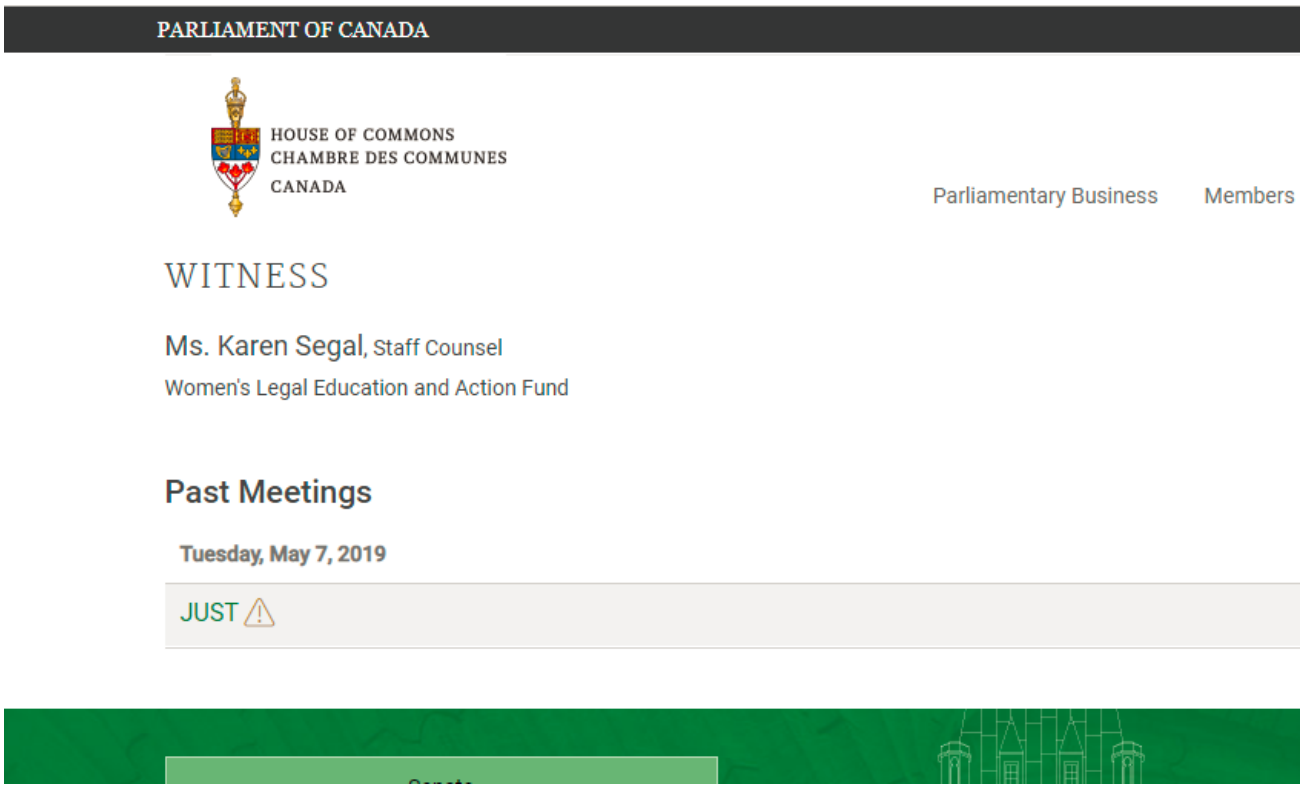
Telephone number: 416-595-1666 Ext. 229
Fax number: 416-595-0094

In what should surprise no one, HIV Legal Network has been lobbying the Federal Government a lot over the last several years. Don't worry, Canadian tax dollars are helping to pay for this.

HIV Legal Network is also not the only group trying to weaken the criminal penalties. There

are several more.

Women's Legal Education & Action Fund



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One would think that a women's group with a feminist tilt would be very concerned about removing penalties for crimes that can devastate women. Instead, Karen Segal of LEAF argued that non-disclosure of HIV during sexual encounters should be removed from the sexual assault laws, and possibly decriminalized altogether. Segal was more concerned with protecting the rights of causing this.

Remember LEAF? They come out with yet another anti-woman stance, this time, on protecting women from HIV infected people.

Recent Court Decision By ONCA

Canadian HIV/AIDS Legal Network | Réseau juridique canadien VIH/sida

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STATEMENT: COURT DECISION MEANS LAWMAKERS MUST ACT TO END UNJUST, UNSCIENTIFIC PROSECUTIONS OF PEOPLE LIVING WITH HIV

By AIDSLAW | *Published:* AUGUST 7, 2020

The following statement is issued jointly by the Canadian HIV/AIDS Legal Network ("Legal Network"), the Coalition des organismes communautaires québécois de lutte contre le sida (COCQ-SIDA), and the HIV & AIDS Legal Clinic Ontario (HALCO).

August 7, 2020 — This week, the Ontario Court of Appeal released its decision in R. v N.G., a case in which a young man living with HIV appealed his conviction on aggravated sexual assault charges for not disclosing his HIV-positive status before sexual intercourse — despite using a condom in every instance. There was no allegation that HIV was transmitted and no evidence of any incorrect condom use.

We appeared before the Court as interveners when the appeal was heard in February. We argued that **correct condom use is, and should be, sufficient to prevent criminal prosecution**, based on sound science, a proper reading of the law, and various public policy reasons. Regrettably, the Court has disagreed, upholding N.G.'s conviction.

The Court's decision underscores the importance of the federal government bringing forward legislative changes to the *Criminal Code* to prevent the continued misuse of criminal charges that are contrary to science, lead to unjust convictions and ultimately undermine public health.

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. N.G., 2020 ONCA 494
DATE: 20200805
DOCKET: C66296

Lauwers, Trotter and Fairburn JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

N.G.

Appellant

Wayne A. Cunningham, for the appellant

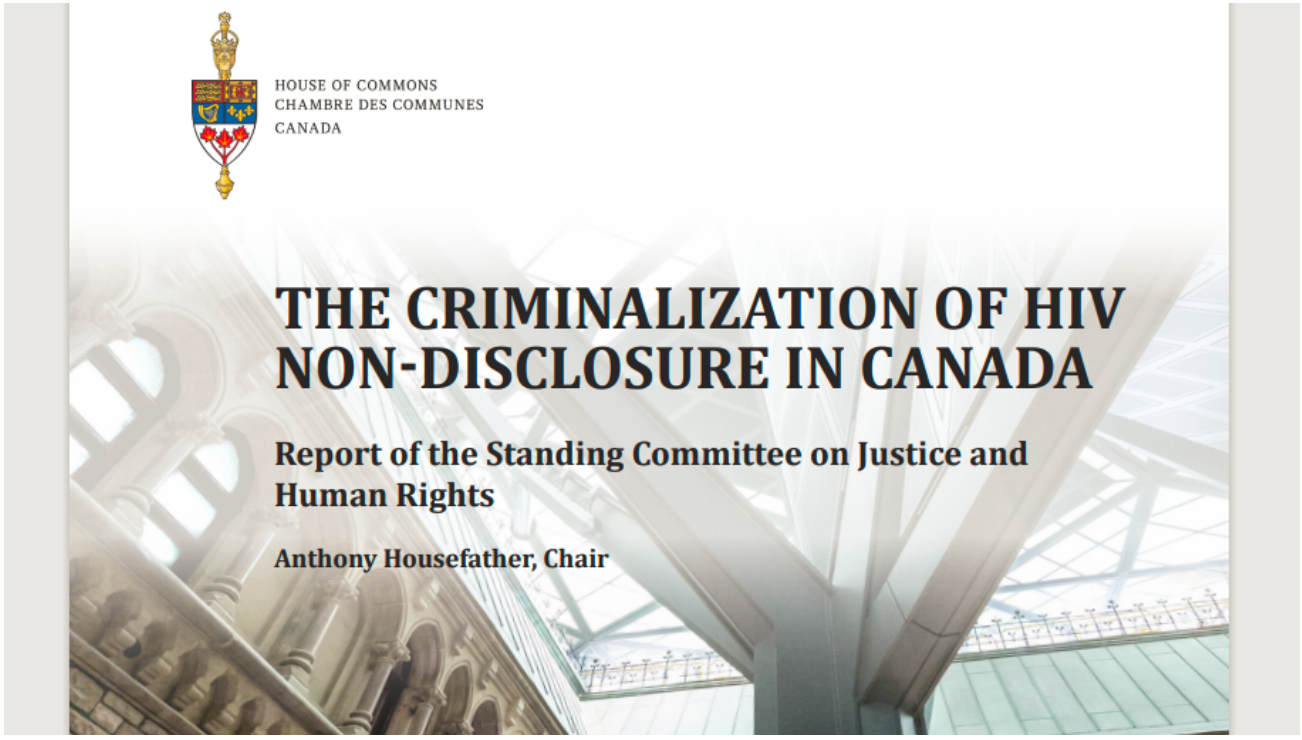
Grace Choi, for the respondent

[1] Over a period of many months, after being diagnosed with HIV and warned about the need to disclose his HIV status to sexual partners, the appellant engaged in repeated acts of vaginal sexual intercourse with three different women. The appellant wore condoms ***but did not disclose his HIV-positive status and was not on antiretroviral medication. The complainants testified that they would not have consented to having sexual intercourse with the appellant had they been aware of his HIV-positive status***.

[2] The appellant was charged with multiple offences, including three counts of aggravated sexual assault. The trial focused on ***whether the appellant's failure to disclose his HIV status to the complainants, prior to sexual intercourse, constituted fraud vitiating their consent to that sexual activity*** in accordance with the principles laid down in R. v. Mabior, 2012 SCC 47, [2012] 2 S.C.R. 584. ***Although one of the complainants was diagnosed with HIV after her sexual relationship with the appellant, there was no proof that she contracted the virus from him***.

And this goes to the heart of the matter: the other person would not have consented if the HIV status had been disclosed ahead of time. While these convictions were upheld, all of this can change if the Federal Government does implement changes to the criminal code.

Comm Report Recommends Decriminalization


HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA
THE CRIMINALIZATION OF HIV NON-DISCLOSURE IN CANADA
Report of the Standing Committee on Justice and Human Rights
Anthony Housefather, Chair

Final Report To Parliament

5.1.1 Immediately Prohibiting the Use of Sexual Assault Provisions

The Committee agrees with witnesses that the use of sexual assault provisions to deal with HIV non-disclosure is overly punitive, contributes to the stigmatisation and discrimination against people living with HIV, and acts as a significant impediment to the attainment of our public health objectives. The ***consequences of such a conviction are too harsh and the use of sexual assault provisions to deal with consensual sexual activities is simply not appropriate***.

5.1.2 Limiting Criminalization to the Most Blameworthy Circumstances

The Committee believes that a ***new offence should be created in the Criminal Code to cover HIV non-disclosure cases in specific circumstances. The new offence should not be limited to HIV but cover the non-disclosure of infectious diseases in general***. The Committee is of the view that people living with HIV should not be treated differently than people living with any other infectious disease.

Recommendation 2

That the Minister of Justice and Attorney General of Canada immediately establish a federal-provincial working group to develop a common prosecutorial directive to be in effect across Canada

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• to ***end criminal prosecutions of HIV non-disclosure, except in cases where there is actual transmission of the virus***;

• to ensure that the factors to be respected for criminal prosecutions of HIV non-disclosure reflect the most recent medical science regarding HIV and its modes of transmission ***and only applies when there is actual transmission having regard to the realistic possibility of transmission***. At this point of time, HIV non-disclosure should never be prosecuted if (1) the infected individual has an undetectable viral load (less than 200 copies per millilitre of blood); (2) condoms are used; (3) the infected individual's partner is on PrEP or (4) the type of sexual act (such as oral sex) is one where there is a negligible risk of transmission.

The report is correct in one regard: that this shouldn't be limited to HIV. However, it otherwise comes across as pretty indifferent to the real world consequences of withholding such information to a partner.

While it talks about creating a new offence, it would most likely have very minor penalties.

Lametti Promises To Implement If Re-Elected

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Liberals hope to deal with HIV nondisclosure issue if re-elected, says justice minister
SJ
By Shawn Jeffords The Canadian Press
Fri., June 14, 2019 | 2 min. read
Article was updated Jun. 14, 2019

The Liberals ***hope to address the criminalization of HIV nondisclosure if re-elected in the fall***, the federal justice minister said Friday as advocacy groups pushed the government to make changes to the law.

HIV ***nondisclosure has led to assault or sexual assault charges because it's been found to invalidate a partner's consent*** — the rationale being that if someone knew a person had HIV, they wouldn't consent to sexual activity because of the risk of transmission.

Advocates say the justice system lags behind the science on the issue, with ***a growing body of evidence saying there is no realistic possibility of transmission of HIV if a person is on antiretroviral therapy and has had a suppressed viral load for six months***.

A parliamentary committee has been examining the issue for months and is expected to release a report with recommendations next week. ***Justice Minister David Lametti said the Liberals want to address the matter*** but won't have time to act before the October election.

This misses the point. While antiretrovirals may be able to treat the person with HIV, the

other person would likely still withdraw their consent anyway.

It must be noted however, that the CPC members on the committee dissented in their views.

CANADA, CANADIAN BILLS, CRIMINAL, IDENTITY/RELIGION, LGBTQ, LOBBYING, NGO/CS, TRAFFICKING, SMUGGLING, CHILD EXPLOITATION